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Thomas G. Gatzunis, P.E.
Commissioner

Thomas P. Hopkins
Director

Board Meeting Minutes – January 26, 2015

21st Floor – Conference Room 1

Present Board Members:

- Walter White, Executive Office of Public Safety Designee, Chair (WW)
- Jeffrey Dougan, Massachusetts Office on Disability Designee (JD)
- Raymond Glazier, Executive Office on Elder Affairs Designee (RG)
- Andrew Bedar, Member (AB)
- Lisa Pilorz, Member (LP)

and

- Kate Sutton, Program Coordinator/Clerk for Proceedings (KS)
- Thomas Hopkins, Executive Director (TH)

Members Not Present:

- Diane McLeod, Vice Chair (DM)
- George Delegas, Member (GD)
- Carol Steinberg, Member (CS)

- Meeting began at approximately 9:00 a.m.

1) Discussion: Roll Call

WW - Call to order all but George Delegas, Carol Steinberg, and Diane McLeod present

2) Discussion: Methuen, various complaints regarding sidewalks, curb cuts and handicapped parking, (C14-085, 086, 090)

TH - EXHIBIT – Patrick Bower, Director of DPW for Methuen, dated January 2015
- C14-085, suggesting compliance date of 9/15/15; complainant ok with date

AB - *accept*

RG - *second – carries with JD and LP abstaining*

George Delegas, Member (GD) – now present

TH - C14-086, suggesting compliance date of 9/15/15; complainant ok with date

AB - *accept*

RG - *second – carries with JD and LP abstaining*

TH - C14-090, suggesting compliance date of 9/15/15; complainant requesting June 30, 2015

AB - *accept Town's request for 9/15/15*

RG - *second – carries with JD and LP abstaining*

TH - C14-091, town disputes jurisdiction
- still doing more research regarding jurisdiction

TH - C14-128, suggesting compliance date of 9/15/15; complainant seeks 6/1/15
- missing curb cut

AB - *accept the Town's request to September 15, 2015*

GD - *second – carries with JD and LP abstaining*

TH - C14-137, suggesting compliance date of 9/15/15; Complainant suggests 6/1/15
- grating is incorrect

RG - *find in favor of complainant in all presented cases for Methuen, with the exception of C14-091, which is still being researched*

RG - *accept the proposed Town date of 9/15/15*

AB - *second – carries with JD and LP abstaining*

TH - C14-141, suggest compliance date of 9/15/15; Complainant requests 6/1/15
- parking on Osgood Street

AB - *accept Complainants date for June 1, 2015*

RG - *second – carries with RG and LP abstaining*

3) Incoming: Emergency Homeless Shelter, 112 South Hampton Street, Boston (V15-002)

TH - EXHIBIT – variance application and supplemental information
- spending over a million; full compliance is required
- renovation of second floor first to building gang showers and bathrooms and sleeping rooms
- request for the existing elevator within the building
- the existing cab size is 54" by 40"

- 28.5 for door jamb markings; 28.6.3, closing devices; 28.7, elevator car size; 28.7.2, handrails in the elevator cab; 28.8.2, elevator controls height; 28.8.4, tactile Braille and visual indicators; 28.10, no emergency communications

- future phase will reconstruct the first floor and the elevator will be remodeled then; completion of April 2015

AB - approve the elevator as is, on the condition that plans of the first and second floor with detailed dimensions show all of the accessible elements; and when the elevator is reconfigured it shall comply fully with all but the overall cab size; comply by April 30, 2015

GD - second – carries unanimously

4) Incoming Discussion: War Memorial at Mt. Greylock State Reservation, Adams (V14-257)

TH - EXHIBIT – John Murray, Commissioner of DCR submitted letter on January 22, 2015

- previously granted relief on the condition that they look at seasonal installation of cameras

- they are still opposed to this since it is not a staffed location

- they are proposing to mount photographs of the view from the top along the base of the tower

RG - accept the proposed installation of the seasonal photographs at the base of the building

AB - second – carries unanimously

5) Incoming Discussion: TD Bank, 2 Harbor Loop, Gloucester (V14-206)

TH - EXHIBIT – Mike McGowan of Bergmeyer Associates, letter received January 19, 2015

- they had not submitted variance for 75” by 84” single user toilet room, now submitted

JD - grant as proposed

AB - second – carries unanimously

TH - project is over 30%

- 3 steps from ATM into bank at sidewalk, ATM is accessible, and other entrance is accessible from parking lot

- existing walls and electrical work would need to be moved to create access at this entrance

RG - grant as proposed

AB - second – carries unanimously

6) Incoming: Presidential Courts of Stoughton, 223 Pearl St., Stoughton (V14-358)

TH - EXHIBIT – variance application and supplemental information

- renovations of the residential apartment buildings, built in the 1970s

- seeking relief to the number of units

- proposing 2 existing and occupied units to be converted to Group 2A units, instead of the required 5

Group 2A units

AB - schedule a hearing

JD - second – carries unanimously

7) Incoming Discussion: Restaurant, 251 Bowdoin St., Dorchester (V14-188)

TH - EXHIBIT – January 21, 2015 letter from Marco DeBarros

- previously required approval of incline lift from the Boston ISD, but ISD sent a letter that the stair was part of egress and the lift would not work
- purchased the building in November of 2012, have not been given permits from ISD for the restaurant construction work to create a restaurant at the first and second floor of the building
- now seeking 60 months/December 2020 to install a stair lift
- in the meantime, he is proposing to have full compliance at the first floor
- I will meet with him to discuss the case since all appeal periods have expired

8) Incoming: Jimmy John's, 123 Antwerp Street, Boston (V15-004)

- TH - EXHIBIT – variance application and all supplemental information
 - seeking to waive 2-week waiting period, application came in on the January 21, 2015

GD - allow waiving of 2 week waiting period

JD - second – carries unanimously

- TH - gourmet sandwich shop; renovation of existing tenant space
 - no partial analysis done
 - some booth seating required by the franchise
 - store is 100% built and ready to open

AB - deny and have the architect meet with TH

GD - second – carries unanimously

9) Incoming Discussion: Commercial Building, 80-90 Glenway St, Dorchester (V14-180)

- TH - meeting with the Petitioners and members of the City of Boston Disability Commission and Neighborhood Commission
 - EXHIBIT- January 21, 2015 submittal from Nick Gurtin of Abacus Architects; January 21, 2015 e-mail from Kathryn Quigley in support of Option C as proposed by the Petitioners on January 21, 2014

JD - grant Option C as proposed, with the Commission's condition that the path is kept clear, and buzzers at all doors for assistance as required

LP - second – carries unanimously

Brief Break

10) Incoming: Thorne's Marketplace, 150 Main St., Northampton (V14-347)

- TH - EXHIBIT – variance application and supplemental information
 - just over 30%
 - requesting 45 variances

JD - hearing

RG - second – carries unanimously

11) Incoming Discussion: Harvard Club of Boston, 380 Commonwealth Ave, Boston (V14-129)

- TH - beginning Phase 2 of renovation
 - EXHIBIT – 1/22/15 letter from Dan Rah, architect for the project
 - requesting permits be allowed to be issued, on the condition that new variance application from new owner will be submitted by February 2, 2015

AB - allow the issuance of the permit, on the condition that full 30% analysis application is submitted by 2/2/15; with instructions on scoping included

JD - second – carries with LP abstaining

12) Incoming: Wellesley United Methodist Church, 80 Beacon St., Framingham (C14-100 & V14-357)

TH - EXHIBIT – application and supplemental information
- lower handrail on the ramp is not continuous
- all other matter cited in the complaint are being corrected

AB - deny the variance

GD - second – carries unanimously

JD - find in favor of the complainant

RG - second – carries unanimously

13) Incoming: Avona School, d/b/a Acera School, 5 Lowell Ave., Winchester (V14-354)

TH - EXHIBIT – variance application and supplemental information
- change of use to a school, but no plans
- not clear on spending either

JD - require more information from Petitioners via plans of first and second floors and accessibility at first floor

AB - second – carries unanimously

14) Incoming Discussion: New Dance Complex, 536 Mass. Ave., Cambridge (V14-316)

TH - conversion of 1st floor retail to dance studio
- took this matter up at the December 1, 2014 meeting to continue the discussion and have the petitioners meet with me
- variance in 1995 for the installation of an incline lift to the second floor
- the second floor was originally the main dance studio floor
- adding a connecting stair between new first floor tenant space and the space above, so vertical access within the space is required
- EXHIBIT – plans A-05a and set of plans, Vital Albuquerque, AIA; submitted by Mary McCarthy on January 20, 2015
- seeking no vertical access within the space since there is a door from the tenant space that connect to the corridor which has the incline stair lift
- jurisdiction is work performed (3.3.1b)

JD - grant as proposed

GD - second – carries unanimously

TH - other 4 variances are all regarding existing entrance into the building and existing incline lift
- there will be a sloped landing at the entrance, lack of continuous handrails and the lack of handrail extensions
- 8.3% where handrails are and 3.1% through the entrance door

JD - grant on the condition automatic door openers are provided

AB - second – carries unanimously

15) Incoming Discussion: 12 Story Office Building, 4 Cambridge Center, Cambridge (V14-203)

TH - previously proposed new stair within the building and the installation of a LULA
- EXHIBIT – 1/19/15, Shane Grogan letter noting that the LULA was completed, but put in a different location than what was originally presented (10 feet away from original location approved)

GD - grant as proposed

AB - second – carries unanimously

16) Incoming: Boston Park Plaza Hotel, 50 Park Plaza, Boston (V14-359)

TH - EXHIBIT – variance application and supplemental information, plans and photos
- originally built in 1927
- renovation of all guest rooms; 3.3.1b jurisdiction
- adding 3 new accessible rooms to meet the count; seeking a variance for distribution of the units

GD - grant as proposed for distribution

AB - second – carries unanimously

17) Incoming: Newton Highlands Congregational Church, 54 Lincoln St., Newton Highlands (V14-356)

TH - EXHIBIT – variance application and supplemental information
- proposing to use an incline wheelchair lift to connect entry stair up to the sanctuary level

JD - grant as proposed

RG - second – carries unanimously

18) Discussion: Waverly Commuter Rail Station, 525 Trapelo Rd., Belmont (C12-033)

TH - EXHIBIT – letter from Laura Brelsford of MBTA received on 12/30/14; plans concept 5a (high and low platform plans)
- Federal Transportation Authority is reviewing the plans currently
- plans now propose access via the installation of mini-high platform and elevators down to the inbound and outbound platforms

JD - accept either of the submitted plans

RG - second – carries unanimously

Deirdre Hosler, Attorney for the Board (DH) – now present

19) Hearing: St. Paul's Episcopal Church, 16 Fair Street, Nantucket (V14-149)

WW - called to order at 11 a.m.
- introduce the Board

Heather Baer, Sally & Fitch, LLP, Attorney for the Church (HB)

John Stover, Stover Engineering (JS)

Steve Paradis, Parishioner and Chairman of the Building Committee (SP)

WW - all sworn in
- EXHIBIT 1 – AAB1-155

WW - variance was initially requested for walkways, but that matter has been resolved
- there is a matter regarding jurisdiction at the interior

HB - there is technically not a variance application for any of the interior of the stairs
- Sept. 2, 2014 compliance plan noted the question of jurisdiction based on a case previously brought to the appellate court regarding the jurisdiction
- don't want to discuss jurisdiction at this hearing, want to explore the project work and what is proposed
- the assessed value of the building has not been kept track of; the Town of Nantucket has done no assessments in the past 10 years
- the Town Assessor came out to the property and did an on the spot assessment, but the Town's assessed value is currently in flux and it appears as though the value is around \$6 million
- the building is insured at \$7.8 million
- construction cost for the addition is \$1.5 million, which is only a portion of the building
- 2013 assessment submitted

WW - accept 2013 assessment card as EXHIBIT 2

HB - 2015 assessment card

WW - accept 2015 assessment card as EXHIBIT 3

TH - if there is no assessment or the appraisal is over 3 years old, than can submit appraised value
- value of building for 30% is only relative at the time that the work was performed

HB - although the work that was done at the time was more than 30% of the value of the building at the time, they found that that value was incorrect

JS - applied for a building permit, which was granted on October 16th for kitchens and baths, but the baths were the only project going forward
- addition proceeded, with the understanding that the work inside the church was in progress for the kitchens and bath
- did not do a 30% analysis since did not think that a \$1.5 million addition would be anywhere near 30% of the value of the building
- the 30% issue was not thought of by anyone involved with the project
- the project included accessibility and the creation of the commercial kitchen to serve food to the public without special permitting
- did not think that the Architectural Access Board regulations pertained to a commercial kitchen, which is what the kitchen was constructed as
- entrance ramp was planned, but submitted variance request to install a ramp without handrails
- that variance also brought to light the issue of the 30% rule; and was not ready to discuss the matter of 30% at that time; which resulted in the time variance request for time to submit 30% analysis report
- the variance for the ramp was denied and a walkway was installed
- September 1, 2014 document was the 30% analysis which was required
- in June, counsel was requested and advised to review "The Society of Jesus" case, noting that the Board did not have jurisdiction over the interior of the church

- are proposing accessible seating locations and creating accessible routes
- there are some areas, such as the existing front entrance, where access is not feasible
- took the position that the Board does not have jurisdiction over the interior of the church
- the assessment was faulty at the time that the permit was pulled

HB - the church has not done a full scale evaluation of the cost of compliance at this time
 - so cannot respond to those types of questions
 - don't have a formal plan at this point, and would want to reach an agreement with the Board to resolve this case

JS - 30% rule is the issue
 - the work that is happening will create access but will not be full compliance
 - if determined that 30% met, then will review the building

DH - did the work that was done, raise the valuation?
 TH - yes, have to go on the value listed on the assessor's database when the permit was issued
 - cannot grant variances to jurisdiction, grant variances to items triggered by the jurisdiction

HB - photos of the building

WW - accept photographs of the building as EXHIBIT 4

SP - worked with JS on this project over the last 4 years
 - first photograph is the view of the church from Fair Street
 - stairwell was removed from within the floor area of the existing church to create the addition
 - chapel is accessible via the nave and via the lift
 - anticipate greater usage based on the increased access to the church
 - Gardner Hall is now accessible with the new addition
 - the Hall is used for receptions, overflow seating, youth services, child care during Sunday Services, fellowship dinners and lunches, coffee hours, etc.
 - New Life Ministries also use the Chapel and Gardner Hall as worship space when not in use by St. Paul's

- St. Paul's currently does not have disabled parishioners that we are aware of, and accessibility never brought to the church's attention when the church was not accessible
 - the minister will offer communion within the nave when needed
 - decision to undertake this project was based on the need to make the building more accessible

HB - church named the addition after Mr. Daume, because he wanted to see the church available and usable to all parishioners

SP - Sam Daume had wanted this entrance for the past 12 years, and he passed away before the addition project broke ground

HB - accessibility was the church's goal, there was no intent to circumvent the 30%
 - do want to work with the Board to resolve this matter, but want to put the jurisdictional matters to the side
 - do not want to address the jurisdiction matter, because don't want an order issued to reduce the appeal period time

DH - petitioner needs to choose the arguments that they want to present going forward; need to either have a plan for compliance, or hard evidence regarding the assessed value of the building at the time that the permit was pulled to negate the 30% jurisdiction

TH - analysis with the submittal showed in the numbers submitted in the original variance application showed the numbers that showed that the spending was over 30% of the value of the building

HB - want to just confirm the argument regarding jurisdiction

DH - if the church wants to make the argument that the 30% rule is in play, than need to make that argument as soon as possible; because that will then determine if the Board in fact has jurisdiction

WW - what about the commercial kitchen, is that part of the \$1.5 million project cost

JS - no, that was an additional cost of \$85,000

WW - that cost needs to be added to the overall spending, the work cannot be exempt

TH - sent samples of church cases previously before the Board, with kitchen variances, as an added help to the Petitioners to help them submit a variance application

WW - the Petitioners need to either support their argument of jurisdictional analysis with the submittal of further documentation; or submit a variance application

- JS admittedly stated that he didn't check with the assessor's data regarding the building's value at the time that the permit was pulled

JD - frustrated about 521 CMR jurisdiction, how can we talk about the case if we haven't established jurisdiction

SP - only used by SERV certified members of the church

WW - has to be paid employees of the church only

HB - temporary certificate of occupancy expires today

JD - extend the temporary certificate of occupancy to May 1, 2015, on the condition that their completed application is submitted by that date

GD - second –

RG - have already had 7 months to do the accessibility study

- carries unanimously

LUNCH BREAK

20) Hearing: Apartment Building, 84 Fenway, Boston (V14-205)

WW - called to order at 1 p.m.

- introduce the Board

Nalin Mistry, Mistry Associates (NM)
Amwar Faisal, Owner (AF)

WW - both sworn in
- EXHIBIT 1 – AAB1-22

TH - submittal on November 7, 2014 that did not make it into the package, exhibit submittal
- main issue is the width of the doors for the elevators and the doors into the corridors from the lobby

WW - accept submittal as EXHIBIT 2

NM - 5 story building; 84 family
- and adjoins an 80 family building

WW - accept submittal of photographs of the building – EXHIBIT 3
- 18 photos total
- four plans, accepted as EXHIBIT 4

TH - AAB9, granted in the amended notice of action, waived the 30 day appeal period timeframe, to allow this hearing to be scheduled

WW - building was empty until it was purchased by AF

NM - did some work on the building upon purchase, just renovated the building
- elevator is within the stair tower
- accordion door at interior of elevator and exterior door that swings out
- proposing sliding doors, but the door clear width will not be compliant

TH - original notice of action was not included in the hearing packet
- August 2014 granted a variance for 28.7 (cab size) on the condition that the doors are brought into compliance, and an analysis of spending on the building for the past 12 years

WW - the work outlined on AAB4 is the work that has been done on the building thus far

NM - yes, \$893,319
- tried to find the amount of work performed in the last 12 years, but current owner did not own the building, and could not find anything with ISD
- full renovation of elevator, with the exception of the cab size, the cost would be around \$120-150,000

WW - any analysis of the shaft size?

NM – had two elevator companies look at the shaft, but the cab is the largest it could be for the shaft

WW - how much work left to do?
AF - everything is done, except for the sheetrock at the basement, will be done in another week or two
TH - spending is over 30%

NM - main entrance on Fenway has steps
- meet the requirements for the Group 2A units, no common spaces other than hallways
- all unit doors are 36" doors
- \$120-150,000 for the elevator upgrade
- maximum clear width is 28"
- e-mail from Mark Roy, President of Roy Elevator Cabs dated August 20, 2014

WW - accept e-mail as EXHIBIT 5
- accept letter from Buchanan Elevator Company, dated March 17, 2014 as EXHIBIT 6
- letter is for rehab of existing cab (\$88,000), but does not include doors
- need an estimate for the cost of enlarging the doors, not just the cab; the only concern is the width of the doors

RG - on the side entrance, would like to see improvements in lighting

JD - continue the discussion regarding this matter to have the Petitioners submit cost estimates for the elevator doors to create the maximum width possible; along with an amended variances for the building, as triggered by the spending being over 30% of the value of the building, to be submitted by March 2, 2015

LP - second – carries unanimously

21) Incoming: Boston Stone Building, 7 Marshall Street, Boston (V14-344)

TH - on 1/5/15 there was a request from the owner to allow the issuance of a temporary certificate of occupancy prior to the submittal of the variance application
- the temp. CO was issued to allow the pizza shop only to open, on the condition that the variance application was submitted
- EXHIBIT – variance application and supplemental information

JD - deny

RG - second – carries unanimously

22) Discussion: Meeting Minutes and Decisions from 1/5/15

JD - pg. 12, indicate that JD did not participate
- McDuffie School, pg. 2 did the quote say 23 or 43

GD - accept the minutes and decisions from 1/5/15

AB - second – carries unanimously

- End of Meeting -

Matters not reasonably anticipated 48 hours in advance of meeting

- Jimmy John's, 123 Antwerp Street, Boston (V15-004) - variance application and all supplemental information
- Commercial Building, 80-90 Glenway St, Dorchester (V14-180) - January 21, 2015 submittal from Nick Gurtin of Abacus Architects; January 21, 2015 e-mail from Kathryn Quigley in support of Option C as proposed by the Petitioners on January 21, 2014
- 12 Story Office Building, 4 Cambridge Center, Cambridge (V14-203) - 1/19/15, Shane Grogan letter noting that the LULA was completed, but put in a different location than what was originally presented (10 feet away from original location approved)

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- Methuen, various complaints regarding sidewalks, curb cuts and handicapped parking, (C14-085, 086, 090) - Patrick Bower, Director of DPW for Methuen, dated January 2015
- War Memorial at Mt. Greylock State Reservation, Adams (V14-257) - John Murray, Commissioner of DCR submitted letter on January 22, 2015
- TD Bank, 2 Harbor Loop, Gloucester (V14-206) - Mike McGowan of Bergmeyer Associates, letter received January 19, 2015
- Restaurant, 251 Bowdoin St., Dorchester (V14-188) - 21, 2015 letter from Marco DeBarros
- Harvard Club of Boston, 380 Commonwealth Ave, Boston (V14-129) - 1/22/15 letter from Dan Rah, architect for the project
- New Dance Complex, 536 Mass. Ave., Cambridge (V14-316) - plans A-05a and set of plans, Vital Albuquerque, AIA; submitted by Mary McCarthy on January 20, 2015
- Waverly Commuter Rail Station, 525 Trapelo Rd., Belmont (C12-033) - letter from Laura Brelsford of MBTA received on 12/30/14; plans concept 5a (high and low platform plans)

- Emergency Homeless Shelter, 112 South Hampton Street, Boston (V15-002) - variance application and supplemental information
- Presidential Courts of Stoughton, 223 Pearl St., Stoughton (V14-358) - variance application and supplemental information
- Thorne's Marketplace, 150 Main St., Northampton (V14-347) - variance application and supplemental information
- Wellesley United Methodist Church, 80 Beacon St., Framingham (C14-100 & V14-357) - application and supplemental information
- Avona School, d/b/a Acera School, 5 Lowell Ave., Winchester (V14-354) - variance application and supplemental information
- Boston Park Plaza Hotel, 50 Park Plaza, Boston (V14-359) - variance application and supplemental information, plans and photos
- Newton Highlands Congregational Church, 54 Lincoln St., Newton Highlands (V14-356) - variance application and supplemental information
- Boston Stone Building, 7 Marshall Street, Boston (V14-344) - variance application and supplemental information